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**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**LOS ANGELES DIVISION**

In re

JAMES CAPITAL ADVISORS, INC.,

Debtor.

Case No. 2:23-bk-14820-BB

Chapter 7

**TRUSTEE'S NOTICE OF OPPOSITION  
AND PARTIAL OPPOSITION TO  
MOTION FOR RELIEF FROM STAY;  
MEMORANDUM OF POINTS AND  
AUTHORITIES AND DECLARATION OF  
CAROLYN A. DYE IN SUPPORT  
THEREOF**

DATE: September 12, 2023

TIME: 10:00 a.m.

PLACE: Courtroom "1539"

255 E. Temple Street  
Los Angeles, CA

# **TABLE OF CONTENTS**

	<u>Page</u>
MEMORANDUM OF POINTS AND AUTHORITIES .....	3
I. STATEMENT OF FACTS .....	3
II. ARGUMENT .....	6
A. Mandel’s Discussion of the Arbitration Act is Putting the Cart Before the Horse.....	8
B. The <i>Curtis</i> Factors Mitigate Against Lifting the Stay at this Time On the Claims Other than a Simple Dissolution .....	9
1. The lack of any connection with or interference with the bankruptcy case .....	11
2. Whether the foreign proceeding involves the debtor as a fiduciary .....	11
3. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases.....	11
4. Whether the debtor’s insurance carrier has assumed full financial responsibility for defending the litigation.....	11
5. Whether the action essentially involves third parties, and the debtor functions only as a bailee or a conduit for the goods or proceeds in question.....	11
6. Whether the litigation in another forum would prejudice the interests of the other creditors, the creditors’ committee and other interested parties.....	12
7. Whether the relief will result in a partial or complete resolution of the issues.....	12
8. Whether the judgment claim arising from the foreign action is subject to equitable subordination.....	12
9. Whether movant’s success in the foregoing proceeding would result in a judicial lien avoidable by the debtor under section 522(f) .....	12
10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties.....	12
11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial.....	13
12. The impact of the stay and the “balance of the hurt” .....	13
III. CONCLUSION.....	14

**TABLE OF CONTENTS**  
**(Continued)**

	<b><u>Page</u></b>
DECLARATION OF CAROLYN A. DYE .....	15

# TABLE OF AUTHORITIES

## Page

### CASES

<i>Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)</i> , 912 F.2d 1162 (9th Cir. 1990).....	10
<i>In re Curtis</i> , 40 B.R. 795 (Bankr. D. Utah 1984) .....	10
<i>In re Duvar Apt, Inc.</i> , 205 B.R. 196 (B.A.P. 9th Cir. 1996).....	9
<i>In re Elmira Litho, Inc.</i> , 174 B.R. 892 (Bankr. S.D.N.Y. 1994) .....	9
<i>In re Kronemyer</i> , 405 B.R. 915 (B.A.P. 9th Cir. 2009).....	10
<i>In re Plumberex Specialty Products, Inc.</i> , 311 B.R. 551 (Bankr. C.D. Cal. 2004) .....	9, 10
<i>In re Sonnax Indus., Inc.</i> , 907 F.2d 1280 (2d Cir. 1990).....	9, 10
<i>MacDonald v. Macdonald (In re MacDonald)</i> , 755 F.2d 715 (9th Cir. 1985).....	10
<i>Ozai v. Tabuena (In re Ozai)</i> , 34 B.R. 764 (B.A.P. 9th Cir. 1983) .....	10

### STATUTES

11 U.S.C. § 341(a) .....	4
11 U.S.C. § 362.....	15
11 U.S.C. § 362(d)(1) .....	9
11 U.S.C. § 362(g).....	9
11 U.S.C. § 704.....	15
11 U.S.C. § 704(a) .....	11

### RULES

Fed. R. Bankr. P. 9019(b) .....	4
---------------------------------	---

### TREATISES

3 Alan N. Resnick & Henry J. Sommers, <i>Collier on Bankruptcy</i> , § 362.10 (16th ed. 2013).....	9
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1 TO THE HONORABLE SHERI BLUEBOND, UNITED STATES BANKRUPTCY  
2 JUDGE, THE DEBTOR, MOVANTS AND INTERESTED PARTIES:

3 Carolyn A. Dye, the Chapter 7 trustee (the "Trustee") for the bankruptcy estate of James  
4 Capital Advisors, Inc. (the "Debtor"), hereby submits her Partial Opposition ("Opposition") to the  
5 Motion for Relief from the Automatic Stay (*doc. no. 30*) (the "RFS Motion") filed by James  
6 Mandel IV and Chelsea Mandel II (jointly and severally, "Mandel").

7 The Opposition is based upon the attached Memorandum of Points and Authorities and the  
8 Declaration of Carolyn Dye. Any reply in support of the RFS Motion must be filed and served not  
9 less than 7 days before the date of the hearing.

10  
11 DATED: August 29, 2023

DANNING, GILL, ISRAEL & KRASNOFF, LLP

12  
13  
14 By: 

ERIC P. ISRAEL

AARON E. DE LEEST

Attorneys for Carolyn A. Dye, Chapter 7 Trustee

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**STATEMENT OF FACTS**

On July 31, 2023 (the “Petition Date”), James Capital Advisors, Inc. (“Debtor”) filed a voluntary “emergency” petition for relief under Chapter 7 of title 11 of the United States Code, commencing bankruptcy case no. 2:23-bk-14820-BB.

On or about August 14, 2023, the Debtor filed its Schedules and Statement of Financial Affairs (*doc. no. 13*). The Debtor’s Schedule A/B lists the Debtor’s 50% interest in the Joint Venture as an asset of the Debtor’s estate.

Carolyn A. Dye was appointed as the Chapter 7 trustee of the bankruptcy estate (the “Trustee”), in which capacity she continues to serve.

The Debtor is a real estate brokerage firm. In the ordinary course of its business, the Debtor, through its agents, facilitated real estate transactions between buyers and sellers of real property. As of the Petition Date, the Debtor was the broker in not less than thirteen real estate transactions (the “Pending Transactions”) and had the usual contractual rights under previous listings if any buyer identified under that listing agreement ultimately purchased the property at issue.

On August 10, 2023, the Trustee filed an emergency motion for authority to operate the Debtor’s business for limited purposes (*doc. no. 9*) (the “Operating Motion”), which was heard on August 15, 2023. The Court granted the Operating Motion at the hearing and the order was entered by the Court on August 17, 2023 (*doc. no. 33*).

Movants James Mandel JV, LLC (the “Joint Venture”) and Chelsea Mandel II LLC (jointly and severally, “Mandel”) opposed the Operating Motion (*doc. nos. 11-12*). The Trustee understands that the Joint Venture was involved in sale-leaseback transactions.<sup>1</sup>

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<sup>1</sup> Mandel asserts that three of the 13 Pending Transactions were sale-leaseback transactions and, therefore, Mandel asserts that such transactions belong to the Joint Venture.

1 The initial meeting of creditors under 11 U.S.C. § 341(a) has not yet been held and is  
2 currently set for September 7, 2023.

3 Consistent with her duties, the Trustee is diligently working to liquidate the estate's assets,  
4 account for the Debtor's property, investigate the Debtor's business and financial affairs, and the  
5 other activities attendant with the Trustee's fiduciary role.

6 The Trustee has been communicating regularly with the Debtor's former employees, the  
7 Debtor's bankruptcy counsel, and a number of former agents of the Debtor who are responsible for  
8 the Pending Transactions. The Trustee is focused on helping the agents responsible for closing the  
9 Pending Transactions so that those agents and the estate can collect their shares of commissions. In  
10 furtherance of the Trustee's effort to make sure that the prepetition pipeline of the Debtor's  
11 business can benefit the estate's creditors, the Trustee has been encouraging former agents to  
12 continue listing properties that were part of the Debtor's unfinished business. Accordingly, the  
13 Trustee has sought authority to enter into agreements with successor brokerages on commercially  
14 reasonable terms without requiring Court authority for an arrangement with each of the Debtor's  
15 former agents. See docket no. 48 (Trustee's motion for authority to compromise in classes under  
16 Fed. R. Bankr. P. 9019(b)).

17 The Trustee and her counsel have also been communicating extensively with Mandel's  
18 counsel (and the Trustee with Chelsea Mandel personally), spending several hours listening to their  
19 concerns, both in person and over the telephone or videoconference. The Trustee and her counsel  
20 have received hundreds, if not thousands of pages of documents, over recent weeks, from the  
21 Debtor and Mandel. The Trustee and her counsel have received and replied to many dozens of  
22 email communications from Mandel's counsel over this time. Mandel has expressed repeatedly  
23 that Mandel believes her concerns are urgent. The Trustee has been personally very involved in  
24 discussions with Mandel and has invested her energy and the estate's resources in attempts to work  
25 out issues with Mandel on a consensual basis.

26 However, despite all of these communications, and the Trustee's and her counsel's best  
27 efforts, the Trustee has not had sufficient time to analyze the requests made by Mandel and has not  
28 received sufficient information to satisfy the Trustee's investigative mandate. For example,

1 Mandel seeks dissolution of the Joint Venture, but the Trustee does not know the value of the  
2 estate's 50% interest in the Joint Venture. In the latest email the proposed dissolution date was  
3 January 1, 2023, which the Trustee rejected. Among other information which the Trustee lacks is  
4 information that would aid in the evaluation of the pipeline of the Joint Venture's business, bank  
5 records or the complete accounting records of the Joint Venture for the last several months.  
6 Mandel's position is that the formal dissolution should be allowed immediately, now retroactive to  
7 January 1, 2023, and the economic impact on the estate of such dissolution should be determined  
8 later. The Trustee is concerned that the decision to dissolve itself and its effective date may have  
9 economic impacts on the estate that the Trustee has not been afforded sufficient time to investigate,  
10 let alone understand. The Trustee is concerned that business of the Joint Venture may have been  
11 diverted to new ventures, and the Trustee needs to investigate these and other issues.

12 Notwithstanding, the Trustee's efforts to resolve issues with Mandel, on or about August  
13 16, 2023, Mandel filed her Motion for Relief from Stay (*doc. no. 30*) (the "RFS Motion") and  
14 Application for Order Setting Hearing on Shortened Notice for Motion for Relief From the  
15 Automatic Stay (*docket no. 29*) (the "Application Shortening Time"). After receiving notice of the  
16 Application Shortening Time, the Trustee's counsel immediately and repeatedly made demand for  
17 such financial documents that would aid the Trustee in evaluating the Debtor's interest in the Joint  
18 Venture. In response, on or about August 17, 2023, Mandel's counsel provided a limited set of  
19 documents.

20 The Trustee opposed the Application to Shorten Time (*doc. no. 35*), and the Court denied  
21 the Application to Shorten Time (*doc. no. 40*) based on a lack of good cause.

22 Mandel then gave notice of the motion on regular notice (without refile the Motion) (*doc.*  
23 *no. 45*).

24 The RFS Motion seeks an order from the Court lifting the automatic stay to allow an  
25 arbitration to proceed before a New York arbitrator who was only appointed in May 2023 (the  
26 "Arbitration"). RFS Motion, Memorandum of Points & Authorities, *doc. no. 30-2*, page 5, line 10.  
27 The Arbitration seeks four types of relief: (1) to liquidate damages owing by the Debtor to  
28 Mandel; (2) to liquidate damages owing by the Debtor to the Joint Venture; (3) to assess attorneys'



1 fees against the Debtor, and (4) for a dissolution of the Joint Venture “and certain ancillary relief.”

2 Id. pp. 4-5. The Trustee is advised that the Debtor has asserted cross-claims back as well.

3 According to the Arbitration scheduling order, the arbitration hearing, i.e., trial was  
4 tentatively scheduled for October 9-13. See Exhibit 1 to RFS Motion, doc. no. 30-1 at ECF page  
5 10.

6 The Trustee has only begun to investigate the Joint Venture and has not determined  
7 whether, and, if so, to what extent, she will participate in the Arbitration if relief from stay were  
8 granted. The Trustee could not be in a position to meaningfully appear and participate in the  
9 Arbitration with the upcoming deadlines, many of which have already passed. See RFS Motion at  
10 page 5, line 10 through page 6, line 13, and Exhibit 1, doc. no. 30-1 at ECF page 10. The Trustee  
11 has also not located or retained counsel to represent her in the Arbitration in New York, and the  
12 Court has also not authorized the Trustee to employ special litigation counsel to represent the  
13 Trustee in the Arbitration. Accordingly, if relief from stay were granted, the Trustee would not be  
14 able to participate in the Arbitration, which could result in a ruling or judgment against the Debtor  
15 adversely affecting the estate.

16 With respect to the request to dissolve the Joint Venture, the Trustee does not oppose lifting  
17 the stay to allow the Arbitrator to dissolve the Joint Venture, but that relief should be narrow and  
18 only allow dissolution and not a winding up of the affairs, and only as of the Petition Date.

19 For all these reasons, the RFS Motion should be denied, except for a limited lifting to allow  
20 the Arbitrator to order a dissolution as of the Petition Date but not wind up the Joint Venture’s  
21 affairs. The Trustee further prays for all other appropriate relief.

## 22 II.

### 23 ARGUMENT

24 Here, for the reasons discussed below, no good cause is shown to grant the RFS Motion.

25 The purpose of the automatic stay in this situation is to protect the Debtor’s estate, its  
26 assets, and the interests of all creditors from aggressive creditors who, to the detriment of other  
27 creditors, race to the courthouse and adversely impact the estate of an insolvent entity. The  
28

1 automatic stay is designed to enable the orderly administration of the bankruptcy estate, which in  
2 turn promotes the policy of equality of distribution among all creditors, not just the most aggressive  
3 creditor. The Trustee needs an adequate amount of time to conduct her investigation into the Joint  
4 Venture before any potential value is lost via a dissolution in the arbitration. There is real potential  
5 harm to the Debtor's estate from moving so quickly. It is simply unknown at this time to the  
6 Trustee, notwithstanding the assurances of Mandel's counsel, what outcome dissolution of the Joint  
7 Venture in the arbitration will have on the Debtor's interest and value to the estate. Additionally,  
8 turning over assets of the estate when the value is unknown and/or title to such assets may be in  
9 dispute will be detrimental to all creditors that may have an interest in receiving a distribution from  
10 the estate.

11 First, there is no underlying urgency here. The RFS motion makes clear that the arbitrator  
12 was only appointed on May 3, 2023, and the first hearing in the Arbitration took place on June 2,  
13 2023. Although the arbitrator appears to have made a few initial rulings and issued a scheduling  
14 order, the final

15 Arbitration hearing is not set to be held until October 9-13, 2023. *See* doc. no. 30-1, Ex. 1.  
16 There is no evidence that the prior dates or the final hearing set by the arbitrator must go forward as  
17 scheduled now that the Debtor has filed bankruptcy. In fact, the August 7, 2023 Arbitration  
18 hearing cited by Mandel on the dissolution of the Joint Venture was already cancelled by Mandel's  
19 counsel and did not go forward because of the Debtor's bankruptcy filing.

20 Moreover, the Trustee will not be prepared to proceed with the current deadlines set in the  
21 Arbitration or a final Arbitration hearing in October 2023. She needs to be able to conduct her  
22 investigation and possibly retain special litigation counsel.

23 Second, the Trustee needs time to investigate the estate's interest in the Joint Venture and  
24 its value for the Debtor's estate. As set forth above, the bankruptcy case was only filed and the  
25 Trustee was only appointed on July 31, 2023 – approximately four weeks ago. The Debtor did not  
26 file its schedules until August 14, 2023 – a mere two weeks. The initial 341(a) meeting has not  
27 even taken place. The Trustee is investigating whether the underlying joint venture agreement may  
28 be an executory contract. Contractual rights of the Debtor comprise estate property protected by

1 the automatic stay. The Trustee will need time to evaluate whether the joint venture agreement  
2 may have value for the estate. However, the Trustee does not believe that she can conduct and  
3 conclude her investigation into the nature of the Debtor's interest in the Joint Venture and the value  
4 thereof and be in a position to adequately address the estate's concerns and respond to the issues  
5 raised by Mandel, in the time demanded by Mandel. Such investigations take time and may require  
6 the use of forensic accountants or other experts.

7 The Trustee has been working to preserve the estate's assets, working with a number of  
8 agents and assets that have nothing directly to do with Mandel. At the same time the Trustee has  
9 been trying to better understand Mandel's position and is hoping to be able to provide Mandel with  
10 some of the things that Mandel demands without need for Court intervention, or by stipulation.  
11 However, the Trustee has been unable to conduct her due diligence, address the administrative  
12 needs of the estate, and respond to various litigation matters generated by Mandel under the time  
13 constraints sought by Mandel.

14 Third, and finally, it is important to note that Mandel admits that the Arbitration seeks: (a)  
15 money damages from the Debtor to Mandel; (b) money damages from the Debtor to the Joint  
16 Venture; (c) dissolution of the Joint Venture; and (d) attorneys' fees. *See* RFS Motion, doc. no. 30-  
17 2. The Trustee understands that the Debtor filed cross-claims as well. Thus, the relief requested in  
18 the Arbitration includes requests for damages and fees against the Debtor, which are pre-petition  
19 claims, and dissolution of the Joint Venture. There is no urgency here to determining any damages  
20 owing from the Debtor. Mandel and the Joint Venture can file their proofs of claim and the Court  
21 can resolve those claims, if and when it needs to do so. With respect to any dissolution, again, it is  
22 unknown at this time what ultimate result a dissolution will have on the Debtor's interest in the  
23 Joint Venture. The Court should not permit Mandel to rush the estate to that conclusion,  
24 potentially damaging any value to the estate, when the Trustee's investigation has only begun.

25 **A. Mandel's Discussion of the Arbitration Act is Putting the Cart Before the Horse**

26 If one of the parties were asking the Bankruptcy Court to rule on the matters recently sent to  
27 Arbitration, Mandel's discussion of the Federal Arbitration Act might be relevant. The Trustee  
28 notes on that score that the Debtor's interest in the Joint Venture is property of the estate, so

1 Mandel's allegation that the matter is not a core matter may be entirely misdirected. In any event,  
2 the relevant discussion should be whether the stay should be lifted at this time, not where the  
3 claims will be litigated.

4 Now that there is a bankruptcy filing, Mandel and the Joint Venture can file claims against  
5 the estate. As it is unclear whether there will ever be funds in the estate to pay any damages that  
6 may be assessed, there is no need to force litigation to liquidate those claims. Mandel can file her  
7 proof of claim, which is deemed allowed until someone objects. After the Trustee completes her  
8 investigation, the Trustee will be in a position to suggest a course of action -- if any action is  
9 needed at all. There is no need to lift the stay at this time to assert unsecured claims against the  
10 estate.

11 With respect to the dissolution, the Trustee does not oppose lifting the stay for the sole  
12 purpose of dissolving the Joint Venture, but not to wind up its affairs or rule on ownership of assets  
13 or claims between the parties, although the effective date for dissolution should be the Petition Date  
14 for purposes of determining the assets of the Joint Venture. The winding up can be addressed later  
15 after the Trustee completes her investigation and has time to determine the best course of action for  
16 the estate.

17 **B. The Curtis Factors Mitigate Against Lifting the Stay at this Time On the Claims Other**  
18 **than a Simple Dissolution**

19 The burden of proof on a motion for relief from the automatic stay is a shifting one. *See* 11  
20 U.S.C. § 362(g); *In re Plumberex Specialty Products, Inc.*, 311 B.R. 551, 557 (Bankr. C.D. Cal.  
21 2004) (citing *In re Sonmax Indus., Inc.*, 907 F.2d 1280, 1285 (2d Cir. 1990)). To obtain relief from  
22 the automatic stay, the party seeking relief must first establish a prima facie case that "cause" exists  
23 for relief under § 362(d)(1). A prima facie case requires the movant to establish a "factual and  
24 legal right to the relief that it seeks." *Id.* n.10; *see also* 3 Alan N. Resnick & Henry J. Sommers,  
25 *Collier on Bankruptcy*, § 362.10 (16th ed. 2013) (citing *In re Elmira Litho, Inc.*, 174 B.R. 892, 902  
26 (Bankr. S.D.N.Y. 1994)). Once a prima facie case has been established, the burden shifts to the  
27 debtor to show that relief from the stay is unwarranted. *Plumberex*, 311 B.R. at 557 (citing *Sonmax*,  
28 907 at 1285; *In re Duvar Apt, Inc.*, 205 B.R. 196, 200 (B.A.P. 9th Cir. 1996)). If the movant fails

1 to meet its initial burden to demonstrate cause, relief from the automatic stay must be denied.  
2 *Plumberex*, 311 B.R. at 557.

3 What constitutes adequate “cause” to grant relief from the automatic stay is decided on a  
4 case-by-case basis. *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009) (citing *Christensen*  
5 *v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990)). In  
6 determining whether relief from the automatic stay should be granted to allow state court  
7 proceedings to continue, considerations such as judicial economy, the expertise of the state court,  
8 prejudice to the parties and whether exclusively bankruptcy issues are involved should be taken  
9 into account. *In re Kronemyer*, 405 B.R. at 921 (citing *MacDonald v. Macdonald (In re*  
10 *MacDonald)*, 755 F.2d 715, 717 (9th Cir. 1985); *Ozai v. Tabuena (In re Ozai)*, 34 B.R. 764, 766  
11 (B.A.P. 9th Cir. 1983)).

12 The factors articulated in *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984) (the  
13 “*Curtis* Factors”) are “appropriate, nonexclusive, factors to consider in deciding whether to grant  
14 relief from the automatic stay to allow pending litigation to continue in another forum.” *In re*  
15 *Kronemyer*, 405 B.R. at 921. Not all twelve *Curtis* Factors are relevant in every case, and a court is  
16 not required to give each of the *Curtis* Factors equal weight in making its determination. *In re*  
17 *Plumberex Specialty Products, Inc.*, 311 B.R. 551, 560 (Bankr. C.D. Cal. 2004) (citing *Sonnax*  
18 *Indus., Inc. v. Tri Component Prods. Corp. (In re Sonnox Indus., Inc.)*, 907 F.2d 1280, 1286 (2d  
19 Cir. 1990)). As the *Curtis* court noted, “the most important factor in determining whether to grant  
20 relief from the automatic stay to permit litigation against the debtor in another forum is the effect of  
21 such litigation on the administration of the estate... even slight interference with the administration  
22 may be enough to preclude relief in the absence of a commensurate benefit.” *In re Curtis*, 40 B.R.  
23 at 800.

24 Here, an analysis of the relevant *Curtis* factors shows that the Movants have not met their  
25 burden of proof by establishing a prima facie case for relief from stay to proceed with the  
26 Arbitration.

27 ///

28 ///

1           **1. The lack of any connection with or interference with the bankruptcy case**

2           The Trustee's primary duty under 11 U.S.C. § 704(a) is to "collect and reduce to money the  
3 property of the estate for which such trustee serves, and close such estate as expeditiously as is  
4 compatible with the best interests of parties in interest." Granting stay relief would interfere with  
5 the Trustee's primary duty and force her to expend resources in a lawsuit that has no benefit to the  
6 Debtor's estate. Stay relief would therefore prejudice the interests of other creditors and interested  
7 parties in the Debtor's bankruptcy case.

8           **2. Whether the foreign proceeding involves the debtor as a fiduciary**

9           This factor is not applicable.

10           **3. Whether a specialized tribunal has been established to hear the particular**  
11           **cause of action and whether that tribunal has the expertise to hear such cases**

12           Bankruptcy courts and state courts have equal expertise in resolving disputes like those at  
13 issue in the Arbitration. An arbitration is not a special tribunal to hear these claims. This factor  
14 does not weigh in favor of stay relief.

15           **4. Whether the debtor's insurance carrier has assumed full financial**  
16           **responsibility for defending the litigation**

17           This factor is not applicable.

18           **5. Whether the action essentially involves third parties, and the debtor functions**  
19           **only as a bailee or a conduit for the goods or proceeds in question**

20           The Debtor has a direct pecuniary/financial interest in the Arbitration and is not a mere  
21 bystander. The Debtor was a member of the Joint Venture. The Joint Venture and litigation over it  
22 is the primary cause of the bankruptcy filing. The parties both believe they are entitled to damages  
23 against the other. See Schedule A/B, doc. no. 13, no. 74 (causes of action). In any event, the  
24 Arbitration at its core involves the Debtor and Mandel. This factor does not support lifting the  
25 automatic stay.

26    ///

27    ///

28    ///

1           **6. Whether the litigation in another forum would prejudice the interests of the**  
2           **other creditors, the creditors' committee and other interested parties**

3           As noted above, the Trustee has had insufficient time and currently lacks the resources to  
4 participate actively in the Arbitration. As a result, granting relief from stay at this time would  
5 effectively allow the Arbitration to resolve issues of vital importance to this estate without the  
6 Trustee's involvement. The Trustee is trying to not let the same litigation that apparently pushed  
7 the Debtor into bankruptcy to render the estate insolvent and interfere with the estate's ability to  
8 benefit other creditors. Accordingly, stay relief would be prejudicial to the interests of creditors.  
9 This factor mitigates strongly against lifting the stay.

10           **7. Whether the relief will result in a partial or complete resolution of the issues**

11           Relief from stay would permit the Arbitration to proceed to judgment on all the issues  
12 between the Debtor and Mandel. However, as set forth above, if relief were granted the estate  
13 would be severely prejudiced because the Trustee would be unable to meaningfully participate in  
14 Arbitration at this time. This factor also weighs against lifting the stay.

15           **8. Whether the judgment claim arising from the foreign action is subject to**  
16           **equitable subordination**

17           This factor is not applicable.

18           **9. Whether movant's success in the foregoing proceeding would result in a**  
19           **judicial lien avoidable by the debtor under section 522(f)**

20           This factor is not applicable because the Debtor is not an individual entitled to assert  
21 exemptions.

22           **10. The interests of judicial economy and the expeditious and economical**  
23           **determination of litigation for the parties**

24           At an appropriate point of time—after the Trustee has completed her investigation,  
25 exhausted settlement efforts, and evaluated any proofs of claim—it might be in the interests of  
26 judicial economy to permit the Arbitration to proceed. That time has not arrived, and is not likely  
27 to be anytime soon. This factor also weighs against lifting the stay.

28           ///

1           **11. Whether the foreign proceedings have progressed to the point where the**  
2           **parties are prepared for trial**

3           The Arbitrator was only appointed on May 3, 2023 – less than 60 days before the  
4 bankruptcy filing. The Trustee is not prepared for trial, and is not going to be anytime soon. The  
5 Trustee could not be in a position to appear and participate in the trial that is scheduled to go  
6 forward on October 9, 2023. The Trustee has also not located or retained counsel to represent her  
7 in the Arbitration, and the Court has also not authorized the Trustee to employ special litigation  
8 counsel to represent her in the Arbitration. The Trustee does not know when, if ever, the Trustee  
9 will be in a position to participate in the Arbitration. This factor also weighs against lifting the  
10 stay.

11           **12. The impact of the stay and the “balance of the hurt”**

12           As noted above, stay relief would interfere with the Trustee’s administration of the estate  
13 and severely prejudice the rights of the trustee with respect to the estate’s interest in the Joint  
14 Venture, and hurt all other creditors of the estate. Stay relief is particularly inappropriate so early  
15 in the case, where the schedules were only filed two weeks ago and the initial 341(a) meeting  
16 hasn’t even occurred yet as of the date when this opposition is due. In contrast, denial of relief  
17 from stay will only temporarily affect the rights of the Movants by delaying the trial. This factor  
18 also weighs against lifting the stay.

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III.

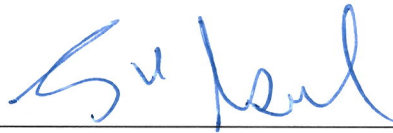
CONCLUSION

WHEREFORE, based upon the above reasons, the Trustee respectfully requests that the Court deny Mandel's RFS Motion. The Trustee further prays for all other appropriate relief.

DATED: August 29, 2023

DANNING, GILL, ISRAEL & KRASNOFF, LLP

By:



ERIC P. ISRAEL  
AARON E. DE LEEST  
Attorneys for Carolyn A. Dye, Chapter 7 Trustee

**DECLARATION OF CAROLYN A. DYE**

I, Carolyn A. Dye, declare:

1. I am the Chapter 7 trustee of the estate of James Capital Advisors, Inc., the debtor in the within bankruptcy case (the "Debtor"). I have personal knowledge of the facts stated in the above opposition and in this declaration, except those matters that are based upon my information and belief, and as to such matters, I believe such matters to be true. If called as a witness, I could testify competently to these facts.

2. This declaration is being filed in support of my above opposition to the Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (*doc. no. 30*) filed by James Mandel JV, LLC (the "Joint Venture") and Chelsea Mandel II LLC (jointly and severally, "Mandel").

3. The Debtor is a real estate brokerage firm. In the ordinary course of its business, the Debtor, through its agents, facilitated real estate transactions between buyers and sellers of real property. I am informed that, as of the Petition Date, the Debtor was the broker in not less than thirteen real estate transactions (the "Pending Transactions") and had the usual contractual rights under previous listings if any buyer identified under that listing agreement ultimately purchased the property at issue.

4. I have engaged bankruptcy counsel to assist me with the fulfillment of my duties under 11 U.S.C. § 704. Consistent with my duties, I am diligently working to liquidate the estate's assets, to account for the Debtor's property, investigate the Debtor's business and financial affairs, and perform other activities attendant with a chapter 7 trustee's fiduciary role.

5. I have been communicating regularly with the Debtor's administrative employees, the Debtor's bankruptcy counsel, and a number former agents of the Debtor who are responsible for the Pending Transactions. Among other activities, I am focused on helping the agents responsible for closing the Pending Transactions so that those agents and the estate can collect their shares of commission.

6. My counsel and I have also been communicating extensively with Mandel's counsel, spending several hours listening to their concerns, in person, over the phone, and via videoconference. I have been personally engaged in trying to negotiate resolutions with Mandel.

1 My counsel and I have received hundreds, if not thousands of pages of documents, over less than  
2 one month involved in the case, from the Debtor and Mandel. My counsel and I have received and  
3 replied to many dozens of email communications from Mandel's counsel over this time. To be  
4 clear, I believe that the parties should be able to reach a global settlement without the necessity of  
5 proceeding with the arbitration, but in terms of my ability to do so meaningfully, I am just "not  
6 there" yet.

7 7. I have not had sufficient time to analyze the issues raised in the Arbitration and have  
8 not received sufficient information to satisfy my investigative mandate. For example, Mandel  
9 seeks dissolution of the Joint Venture, most recently with an effective date of January 1, 2023, but I  
10 do not know the value of the estate's 50% interest in the Joint Venture or what claims the Debtor,  
11 Mandel and the Joint Venture may have against each other. Among other information I lack, is  
12 information that would aid in the evaluation of the pipeline of the Joint Venture's business, bank  
13 records or the complete accounting records of the Joint Venture for the last several months. I am  
14 concerned that business of the Joint Venture may have been diverted to new ventures, and I need to  
15 investigate these and other issues.

16 8. In my judgment and experience as a lawyer and chapter 7 trustee, I believe a  
17 reasonable trustee in this position would be unable to conclude such investigation and be in a  
18 position to adequately address the concerns of the estate with respect to the issues presented by  
19 Mandel in the limited time provided. I believe that an investigation of this nature may require a  
20 number of months and cooperation from those involved, such as Mandel, the Debtor and others. It  
21 also may require the use of forensic accountants or experts.

22 9. I am not now, and will not soon be, in a position to defend the estate in the  
23 Arbitration, to determine whether it is appropriate to engage special counsel for the Arbitration, or  
24 take any other action with respect to the Arbitration other than oppose relief from stay. It is too  
25 early in the case for me to take a position or to know how such position will impact the estate, such  
26 as whether defending or prosecuting any position will generate economic benefit to the estate.

27 10. I am concerned that the amount of time taken in litigating with Mandel will interfere  
28 with my ability to administer the estate for the benefit of all creditors, in addition to being

1 premature, as I have not had an adequate opportunity to investigate the facts concerning the  
2 disputes with Mandel.

3  
4 I declare under penalty of perjury under the laws of the United States of America that the  
5 foregoing is true and correct.

6 Executed at Los Angeles, California on August 28, 2023.

7  
8   
9 CAROLYN A. DYE

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, CA 90067-6006.

A true and correct copy of the foregoing document entitled (*specify*): Trustee's Notice of Opposition and Partial Opposition to Motion for Relief From Stay; Memorandum of Points and Authorities and Declaration of Carolyn A. Dye in Support Thereof will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) August 29, 2023 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page.

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) August 29, 2023, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

The Honorable Sheri Bluebond  
U.S. Bankruptcy Court  
Roybal Federal Building  
255 E. Temple Street, Suite 1534  
Los Angeles, CA 90012

☒ Service information continued on attached page.

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

August 29, 2023  
Date

Gloria Ramos  
Printed Name

/s/ Gloria Ramos  
Signature

ADDITIONAL SERVICE INFORMATION (if needed):

**1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")**

- **Brian K Condon** Brian.Condon@arnoldporter.com, edocketscalendaring@arnoldporter.com
- **Aaron E. DE Leest** adeleest@DanningGill.com, danninggill@gmail.com;adeleest@ecf.inforuptcy.com
- **Carolyn A Dye (TR)** trustee@cadye.com, c197@ecfcbis.com;atty@cadye.com
- **Anthony A. Friedman** aaf@lnbyg.com
- **Eric P Israel** eisrael@danninggill.com, danninggill@gmail.com;eisrael@ecf.inforuptcy.com
- **Alphamorlai Lamine Kebeh** akebeh@danninggill.com
- **Amy Lee Nashon** anashon@troygould.com
- **Zev Shechtman** zs@DanningGill.com, danninggill@gmail.com;zshechtman@ecf.inforuptcy.com
- **United States Trustee (LA)** ustpreion16.la.ecf@usdoj.gov

**2. SERVED BY U.S. MAIL**

James Capital Advisors, Inc.  
10960 Wilshire Blvd  
Suite 805  
Los Angeles, CA 90024

The Honorable Sheri Bluebond  
U.S. Bankruptcy Court  
Royal Federal Building  
255 E. Temple Street, Suite 1534  
Los Angeles, CA 90012